

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****SECOND APPEAL NO. 756 OF 2016****Suresh Ganu Shelke****..... Appellant****VERSUS****The Chief Lands Survey Officer,
CIDCO & Ors.****..... Respondents**

Mr.P.D.Dalvi, a/w. Mr.P.H.Gaikwad, Mr.B.S.Shinde, i/b. Mr.Vivek V. Salunke for the Appellant.

Mr.B.B.Sharma for the Respondent no.1.

CORAM : R.D. DHANUKA, J.**DATE : 30th AUGUST, 2019****P.C.**

By this second appeal filed under section 100 of the Code of Civil Procedure, 1908, the appellant (original plaintiff) has impugned the part of the judgment and decree dated 21st March, 2016 passed by the learned District Judge-3, Raigad – Alibag insofar as the directions issued in paragraph (5) of the operative part of the order i.e. the plaintiff and the defendant nos. 2 to 5 are entitled for regularization of house property for village Asudgaon, admeasuring 500 sq.meter on the basis of reserved price of Board resolution nos. 9046 and 5622 and not allowing the entitlement for an area of 1175 sq.mtrs. which was allegedly encroached upon by the plaintiff is concerned.

2. During the course of the arguments of the second appeal before this court on the last date, it was urged by Mr.Sharma, learned counsel for the respondent no.1 that the claim for regularization of the unauthorized portion of the suit land was already rejected by this court

by an order dated 27th April, 2006 in Writ Petition No.2747 of 2005 filed by Mr.Ashok Ganu Shelke against State of Maharashtra & Ors. The matter was adjourned to enable the parties to produce a copy of the said order for perusal of this court.

3. A perusal of the order dated 27th April,2006 passed by this court in Writ Petition No.2747 of 2005 indicates that the issue of encroachment insofar as the suit property which is subject matter of this second appeal was not the subject matter of the said Writ Petition No.2747 of 2005. I am thus not inclined to accept the submission of Mr.Sharma, learned counsel for the respondent no.1 that the issue of encroachment has been already rejected by this court in the said Writ Petition No.2747 of 2005.

4. Since, the impugned judgment and decree passed by the first appellate court is mainly based on the premise that the issue of regularization was already rejected in the Writ Petition No.2747 of 2005 which is erroneous premise, after hearing the learned counsel for both the parties and in view of the limited challenge insofar as the plot for which an application for regularization was made, I pass the following order :-

(a) The application made for regularization by the appellant (original plaintiff) for the balance area i.e. 675 sq.mtrs is restored to file.

(b) The respondent no.1 is directed to consider the said application for regularization for 675 sq.mtrs. made by the appellant on its own merits and in

accordance with the prevailing policies and resolutions passed by the respondent no.1. The application shall be decided within eight weeks from today.

(c) It is made clear that if the said application is already disposed of, the appellant would be at liberty to file a fresh application for regularization in respect of the said area of 675 sq.mtrs.

(d) If any such application is made, the same shall be decided on its own merit and in accordance with the policy in force when the original application for regularization was made.

(e) The rest of the portion of the judgment and decree dated 21st March, 2016 passed by the learned District Judge – 2 is not modified by this order.

(f) Second appeal is disposed of on the aforesaid terms. There shall be no order as to costs.

[R.D.DHANUKA, J.]